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VIA EMAIL AND UPS

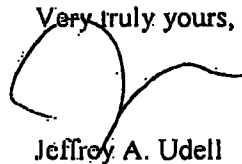
Jeff S. Jordan, Esq.  
Supervisory Attorney  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 6528

Dear Mr. Jordan:

I enclose the response of our client, Ofer Biton, to the Complaint set forth in the above-noted matter. Please feel free to contact me if you have any further questions.

Very truly yours,



Jeffrey A. Udell

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Encl.

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In re:

MICHAEL GRIMM,  
MICHAEL GRIMM FOR CONGRESS  
COMMITTEE, and  
LISA LASKER, as Treasurer,

MUR 6528

Respondents.

**RESPONSE OF OFER BITON TO THE COMPLAINT**

Ofer Biton is not named as a respondent in the above-captioned Complaint. Nonetheless, after alleging that Mr. Biton is an Israeli citizen and a foreign national within the meaning of 2 U.S.C. § 441e (Compl. ¶ 4), the Complaint makes a series of second-hand and unsourced allegations claiming that Mr. Biton committed violations of the Federal Election Campaign Act of 1971, as amended (the "FECA"). The allegations are based entirely upon reports set forth in a recent *New York Times* article that itself relies almost exclusively upon *unsworn* and *anonymous*, statements purportedly made *not* to law-enforcement authorities, but rather to reporters for the *Times*. The one solitary allegation made for attribution (likewise, fatally, *unsworn*) describes conduct that is *not*, in any event, unlawful. Accordingly, Mr. Biton respectfully requests that the Federal Election Commission take *no* further action against him.<sup>1</sup>

<sup>1</sup> Although, as noted, Mr. Biton is not named as a respondent in the Complaint, to the extent that the Commission deems him such, we submit that the Complaint should be dismissed forthwith, as against Mr. Biton.

## STATEMENT OF FACTS

The Complaint was sworn to on January 30, 2012, three days after publication of the January 27, 2012 *Times* article. Complainant Paul A. Duffy alleges not one single fact on personal knowledge. Rather, every allegation in the Complaint merely recycles a similar allegation made in the *Times*.

As for Mr. Biton, the Complaint alleges the following, all relative to Michael Grimm's candidacy for the House of Representatives, 13<sup>th</sup> District of New York, during the 2010 election cycle:

(1) Biton agreed to assist Grimm with fundraising from the Mosdot Shuva Israel congregation ("MSI"), lead by Rabbi Yoshiyahu Yosef Pinto, for whom Biton worked, in order to garner "special assistance" from Grimm in obtaining a green card, should Grimm succeed. (Compl. ¶¶ 6-7.)

(2) Biton traveled with Grimm "together all the time" and introduced Grimm to potential donors from MSI. (Compl. ¶ 8.)

(3) Biton "solicited and bundled contributions for Grimm," purportedly in violation of 2 U.S.C. § 441e(a)(2). (Compl. ¶ 9.)

(4) Biton (together with Grimm) solicited and accepted contributions from MSI members that violated the FECA because the funds: (i) exceeded the personal contribution limit of \$2,400; (ii) exceeded the cash contribution limit of \$100; and (iii) were contributed by foreign nationals. According to the Complaint, Biton "or" Grimm told anonymous persons that Grimm's campaign "would find a way" to accept such unlawful contributions. (Compl. ¶ 10-11.)

(5) Biton transferred a \$25,000 contribution from a foreign national to Grimm. According to the Complaint (as always, parroting an allegation in the *Times* article), the Grimm Campaign thereafter reported this single donation as coming from at least five other people. (Compl. ¶ 15-17.)

As explained more fully below, each of the above allegations is severely deficient. The first three items fail to allege conduct that in any way violates the law. The fourth and fifth items likewise fall short -- both for lacking specificity regarding Mr. Biton's purported conduct and, fatally, because they derive entirely from *anonymous* sources.

Accordingly, to the extent that the Commission considers whether to proceed any further against Mr. Biton -- who was not named as a Respondent in the Complaint -- the Commission should find, as a matter of law, that it does *not* have "reason to believe" that Mr. Biton committed any violation of the FECA. See 2 U.S.C. § 437g(a)(1)(2).

### **ARGUMENT**

Nothing in the Complaint can credibly give this Commission reason to believe that Mr. Biton has violated the FECA, simply because the Complaint alleges conduct that is either: (1) *not* unlawful, no matter how disparagingly uttered by the complainant; or (2) patently insufficient to form the basis for further action, because it is predicated upon anonymous sources.

#### **A. Many of the Allegations Against Mr. Biton Fail to Identify Unlawful Conduct**

The Complaint alleges that, at candidate Grimm's request, Mr. Biton agreed to assist with fundraising, in the hope that, if elected, Congressman Grimm would assist Mr. Biton with obtaining a green card. (Compl. ¶¶ 6-7.) There is nothing improper about this purported conduct.<sup>2</sup>

Under the FECA, it is unlawful: (1) for a foreign national to *make* contributions or donations; and (2) for a candidate (or any person) to *solicit, accept or receive* such contributions or donations from a foreign national. See 2 U.S.C. § 441e(a). There is nothing in the language

<sup>2</sup> The Complaint also alleges, as reported in the *Times*, that the Federal Bureau of Investigation is investigating Mr. Biton for purportedly misappropriating funds from MSI. (Compl. ¶ 4.) Yet neither the Complaint nor the *Times* provides a source for this allegation. In any event, the allegation has nothing to do with the FECA and the fact that someone is "under investigation" is, of course, proof of nothing.

of the FECA that prohibits foreign nationals from soliciting contributions for a campaign. Indeed, this Commission has made clear that a foreign national who serves as an uncompensated campaign volunteer *may* solicit funds for a candidate, so long as the foreign national does not participate in the decision-making of the campaign, in violation of 11 C.F.R. 110.20(i). *See* FEC Advisory Opinion 2004-26 (Guatemalan legislator and fiancé of U.S. Congressman, *inter alia*, “may solicit funds from persons who are not foreign nationals”); *see also* MURs 5987, 5995 & 6015 (Hillary Clinton for President) (no reason to believe campaign violated FECA where Elton John performed concert on behalf of the campaign, in connection with which funds were solicited via email using singer’s name and likeness). Thus, even if Mr. Biton did “assist [Grimm’s] fundraising efforts,” (Compl. ¶ 7), there would be nothing improper in such conduct.

Nor would it be unlawful had Mr. Biton purportedly enjoyed “the hope that, if elected, Grimm would provide [Biton] with special assistance in obtaining a green card.” (Compl. ¶ 7.) Notably, the Complaint does *not* allege that Mr. Biton agreed to assist the campaign *in exchange* for Mr. Grimm’s help, or that Mr. Grimm ever agreed to offer such assistance, if elected.<sup>3</sup>

Next, the Complaint alleges that Mr. Biton traveled with candidate Grimm “together all the time” and introduced Grimm to potential donors from MSI. (Compl. ¶ 8.) Again, such volunteer campaign activities, even for a foreign national, are not unlawful.

The Complaint sums up the foregoing by alleging that, as an Israeli citizen (*i.e.*, foreign national), Mr. Biton’s purported solicitation and bundling of contributions for the Grimm campaign violated 2 U.S.C. § 441e(a)(2). (Compl. ¶ 9.) Again, for the reasons set forth above, there is nothing unlawful about such conduct.

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<sup>3</sup> Moreover, this allegation is additionally defective as it is based on anonymous sources. *See* Point 2, *infra*.

**B. Allegations Based Upon Anonymous Sources are Insufficient**

The remainder of the allegations against Mr. Biton, all anonymous, are deficient for their failure to identify the purported source or sources of the information.

Under the FECA, "[t]he Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint made by a person whose identity is not disclosed to the Commission." 2 U.S.C. § 437g(a)(1). Thus, anonymous complaints cannot form the basis for the Commission's finding "reason to believe" that a person has violated the FECA. 2 U.S.C. § 437g(a)(2). *See* MUR 6296 (Kenneth R. Buck, *et al.*), Statement of Reasons of Commissioners Caroline C. Hunter, Donald F. McGahn and Matthew S. Peterson at 6 (in making reason-to-believe determination, Commission "must identify the sources of information and examine the facts and reliability of those sources to determine whether they 'reasonably [give] rise to a belief in the truth of the allegations presented'"); MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc., *et al.*), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1-2 ("Complaints not based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented.").

For these reasons, the Commission has expressly rejected complaints based upon unsubstantiated, anonymous, sources set forth in newspaper articles. *See, e.g.*, MUR 6056 (Protect Colorado Jobs, Inc., *et al.*), Statement of Reasons of Commissioners Matthew S. Peterson, Caroline C. Hunter and Donald F. McGahn at 6-9 & n.12 (finding no reason to believe, where Commission's Office of General Counsel had based its contrary recommendation upon "one or more [unverified] anonymous sources" in a newspaper article, noting that the

“Commission must have more than anonymous suppositions, unsworn statements, and unanswered questions before it can vote to find RTB and thereby commence an investigation”).

Here, the only allegations in the Complaint that allege any *prima facie* violations of the FECA are all derived from the *Times* article and are unsworn, anonymous and unverified. The Complaint contends that both Mr. Biton and candidate Grimm solicited and accepted contributions from MSI members that: (i) exceeded the personal contribution limit of \$2,400; (ii) exceeded the cash contribution limit of \$100; and (iii) were contributed by foreign nationals. (Compl. ¶ 10.) It alleges that Biton “or” Grimm (without specifying who) told anonymous persons that Grimm’s campaign “would find a way” to accept such unlawful contributions. (Compl. ¶ 11.) Finally, the Complaint alleges that Mr. Biton transferred a \$25,000 contribution from a foreign national to the Grimm Campaign, which thereafter reported this single donation as coming from at least five other people. (Compl. ¶ 15-17.)

As noted, none of these allegations are made upon the personal knowledge of the complainant, but rather come from the *Times* article. Since the Complaint fails to cite directly to any specific portion of the article, one must review the article as a whole to determine whether there are any allegations therein that support the claims in the Complaint. While the article purports to be based upon “more than 15 interviews” with followers of Rabbi Pinto, it fails to identify *any* of the sources who made the above-noted allegations. See “Rabbi’s Followers Cast Doubts on Congressman’s Fundraising,” *New York Times* (Jan. 27, 2012) (“Article”), at p. 1 of Compl. Ex. 1

For instance, the article notes: “Three of the rabbi’s followers said in separate interviews that Mr. Grimm *or* Mr. Biton told them that the campaign would find a way to accept donations that were over the legal limit, were given in cash or were given by foreigners without green

cards." Article at p. 2 of Compl. Ex. 1 (emphasis added). The article doesn't identify who these "followers" are, whether it was Mr. Grimm or Mr. Biton who made the purported statements on any given occasion, or what the context was for the supposed statements.

Next, with respect to Mr. Biton, the article states:

A third follower [of Rabbi Pinto] said he picked up, at Mr. Biton's behest, \$25,000 for Mr. Grimm's campaign from a single Israeli.

"I give the checks to Ofer, and he gives them to Michael," the third follower said.

The third follower said the money donated by the Israeli was falsely listed in Mr. Grimm's campaign disclosure records as having been given by at least five other people

Article at p. 3 of Compl. Ex. 1. As the article does not give the name of this follower, there is absolutely no way to verify his or her integrity or basis of knowledge. The allegation is for this reason deficient. With respect to Mr. Biton, the allegation is additionally deficient in that it fails to allege any role on his part, or even knowledge of, the reporting practices of the Grimm campaign. Nor does it allege any knowledge on the part of Mr. Biton that the "checks" (apparently more than one) were actually given by a "single" Israeli, or that this Israeli was a foreign national. In short, as the precious little information alleged in the article, parroted in the Complaint, is based entirely on an anonymous source, it is a legally deficient basis to proceed, under the above-cited precedents.

Finally, the Article states:

The donors interviewed by The Times said they gave money to the Grimm campaign because Mr. Biton told them that Rabbi Pinto wanted people in his congregation to do so.

The rabbi's followers said Mr. Biton rounded up campaign money for Mr. Grimm in hopes that if Mr. Grimm won, he would help Mr. Biton obtain a green card.



Article at p. 3 of Compl. Ex. 1. These allegations are likewise deficient, both because they are based upon unsworn, anonymous, sources, and because, as set forth in Point 1, *supra*, they fail in any event to allege unlawful conduct.

The *only* statement in the article that was not anonymous was purportedly made by one Yossi Zaga, who said: "Grimm and Biton were together all the time during the campaign. . . . They would drive around together to the homes and offices and ask for contributions." Article at p. 2 of Compl. Ex. 1. Yet this statement plainly fails to allege anything unlawful. It says *nothing* of contributions in excess of limits, cash contributions, contributions from foreign nationals or straw donors. And even assuming that Mr. Biton is a foreign national within the meaning of 2 U.S.C. § 441e, as set forth in Point 1, *supra*, it is not unlawful for a foreign national to "ask for contributions" to a campaign.


#### CONCLUSION

For the foregoing reasons, we respectfully submit that there is patently no lawful basis for finding "reason to believe" that Mr. Biton committed any violation of the FECA. Accordingly, the Commission should take no action, and close its file, with respect to Mr. Biton.

Dated: New York, New York  
July 11, 2012

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